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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

**No. 72-564**

**October Term, 1972**

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1, CARL PILLARD, Principal, Addison High School, and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

*Petitioners,*

*against*

CHARLES JAMES,

*Respondent.*

## PETITION FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI

## MOTION FOR LEAVE TO FILE STATEMENT OF COMMISSIONER OF EDUCATION, *AMICUS CURIAE*

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Ewald B. Nyquist, as Commissioner of Education of the State of New York, hereby respectfully moves this Court for leave to file his statement *Amicus Curiae* in this cause

in support of the petition for rehearing, as provided in Rule 42 of the Rules of this Court. The consent of the attorneys for all parties hereto has been had throughout this litigation. *Amicus* has relied on this fact as shown in the record. Upon being advised, however, of the need for a further motion for leave to file said statement as *Amicus Curiae,* the undersigned immediately obtained the consent of Burt Neuborne, Esq., attorney for respondent herein who authorized the undersigned by telephone to convey the fact of his consent to the Court. Said attorney for respondent, furthermore, also authorized the undersigned to convey to the Court that said attorney for respondent waives the lack of timeliness on the part of the petition for rehearing and the correlative steps of *Amicus Curiae.* The consent of the attorney for petitioner clearly appears in petitioner's motion for leave to file out of time petition for rehearing.

The interest of the *Amicus* herein was set forth in the Brief of *Amicus* supporting the petition for a writ of certiorari, but is here limited entirely to the procedural aspect of the decision of the United States Court of Appeals for the Second Circuit. This interest is further set forth in the statement of *Amicus* tendered with this motion.

The purpose of *Amicus* herein is to protect the judicial function of the Commissioner of Education of the State of New York, which has been exercised by Commissioners of Education and their predecessors in office since 1822.

This judicial function of *Amicus* is of vital importance to the operations of the New York State School System which presently consists of 760 school districts.

*Amicus* is called upon to render some 150 judicial decisions each year. A body of common law is built up

through these decisions which regulate and aid the operations of the New York State School System.

If the decision of the Second Circuit is to stand, this judicial function will be gravely impaired because it would be a waste of time of the parties to such judicial proceedings before *Amicus* and a waste of time for their attorneys to go through the motions of preparing, verifying, serving and filing pleadings, traveling to Albany for oral argument and submitting lengthy memoranda of law, when the losing party in such proceedings can simply ignore the decision arrived at on the basis of such a judicial proceeding and start *de novo* in either the State or Federal Courts and have the State or Federal Courts likewise ignore the basic rule of judicial procedure that no Judge or Court can pronounce judgment against anybody who is not a party to the litigation before him or it.

This aspect of the decision of the Second Circuit goes far beyond the specific details of this litigation and seriously threatens both established judicial procedures and the New York State Education System.

For the foregoing reasons, the Commissioner of Education of the State of New York respectfully requests that this motion be granted.

Respectfully submitted,

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